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| 10/804,238 | 03/19/2004 | Jens Ole Andersen | 81421-4035 | 6603 |
| 28765 7590 08/16/2010 WINSTON & STRAWN LLP PATENT DEPARTMENT 1700 K STREET, N.W. WASHINGTON, DC 20006 | | | EXAMINER VANATTA, AMY B | |
| | | | ART UNIT 3765 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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MAILED

AUG 16 2010

CENTRAL REEXAMINATION UNIT

In re Application of
Jens Ole Andersen
Application No. 10/804,238
Filed: March 19, 2004
Practitioner Docket No.: 81421-4035

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: ORDER TO
: SHOW CAUSE
:
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This is a show cause order based on the expiration of U.S. Patent No. 6,375,773, for which patent the present application requests reissue.

BACKGROUND

1. Reissue application No. 10/804,238 ("238 reissue application") was filed on March 19 2004, for reissue of U.S. Patent No. 6,375,773 ("773 patent") issued April 23, 2002.
2. The Image File Wrapper record for the '238 reissue application reveals that a paper titled "Response To Office Action" was filed on April 12, 2010, and that the prosecution of the application is not closed.
3. The Office's financial records reveal that the 7.5 year maintenance fee for the '773 patent due by April 23, 2010 (the end of the maintenance fee grace period), was not paid.
4. The '773 patent expired at midnight on April 23, 2010, for failure to pay the 7.5 year maintenance fee due.¹ Notice of the expiration of the '773 patent for failure to pay the 7.5 year maintenance fee was published on June 15, 2010, in the *Official Gazette*.²

ORDER TO SHOW CAUSE

As pointed out above, the '238 reissue application is for reissue of the '773 patent, and the '773 patent has expired for failure to pay the 7.5 year maintenance fee. A notice of the expiration of the '773 patent was published in the *Official Gazette*. Because the '773

¹ See: MPEP § 2506, third paragraph.

² See: <http://www.uspto.gov/web/offices/com/sol/og/2010/week24/TOC.htm#ref3>.

patent expired for failure to pay the second maintenance fee, the Director of the USPTO no longer has the authority under 35 U.S.C. § 251 to reissue the '773 patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993). As stated in *Morgan*,

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only 'for the unexpired part of the term of the original patent.' Thus, when *Morgan's* original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority because there no longer was an unexpired term of the patent for which *Morgan's* patent could be reissued. *Morgan's* appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393; emphasis added]

Because the Director no longer has the authority under 35 U.S.C. § 251 to reissue the '773 patent, the Office intends to terminate the present reissue proceeding, and thereafter hold the '238 reissue application to be an abandoned application.

Applicant is hereby provided with a period of **30 DAYS** from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding.

If applicant proposes to show cause why the present reissue proceeding should not be terminated, applicant's showing must include an explanation of why the proceeding should continue, in spite of the expiration of the original patent.

If applicant makes a showing, the showing will be evaluated as to whether it provides sufficient basis as to why the present reissue proceeding should not be terminated. A failure to respond to this show cause order within the set 30-day period will result in the proceeding being terminated by default. If the present reissue proceeding is terminated, jurisdiction over the present application for reissue of the '773 patent will be returned to Technology Center Art Unit 3765 for processing as an abandoned application.

CONCLUSION

1. Applicant is hereby provided with a period of 30 DAYS from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding.
2. Failure by applicant to respond to this show cause order within the set 30-day period will result in termination of the present reissue proceeding by default, followed by a mailing of a Notice of Abandonment of the '238 reissue application.
3. Jurisdiction over the '238 reissue application is being retained by the Office of Patent Legal Administration, pending a response by the applicant, or the expiration of time for a response.

4. Telephone inquiries related to this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.

/Kenneth M. Schor/

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Associate Commissioner
for Patent Examination Policy

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